

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Local Competition and)	CC Docket No. 99-301
and)	
Broadband Reporting)	
)	

**Reply Comments on the
Initial Regulatory Flexibility Analysis and
Notice of Proposed Rulemaking of the
Office of Advocacy, U.S. Small Business Administration**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) submits these Reply Comments to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“NPRM”),¹ in the above-captioned proceeding. The Commission is proposing a new information collection, which will require extensive effort and resources by small entities. While the information would be useful to the Commission, the utility to the Commission must be weighed against the burden to small businesses. Advocacy proposes several alternatives, which will lessen the burden while still allowing the Commission to obtain the information it needs.

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305² to represent the views and interests of small business within the Federal government. Advocacy’s statutory duties include serving as a focal point for concerns regarding the government’s policies as they affect small business, developing proposals for changes in Federal agencies’ policies, and

¹ *In the matter of* Local Competition and Broadband Reporting, *Notice of Proposed Rulemaking*, CC Docket No. 99-301, FCC 99-283 (rel. Oct. 22, 1999).

communicating these proposals to the agencies.³ Advocacy also has a statutory duty to monitor and report on the Commission's compliance with the Regulatory Flexibility Act of 1980 ("RFA"),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Subtitle II of the Contract with America Advancement Act ("SBREFA").⁵

The RFA was designed to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.⁶ The major objectives of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and provide regulatory relief to small entities where feasible and appropriate to its public policy objectives.⁷ The RFA does not seek preferential treatment for small businesses. Rather, it establishes an analytical process for determining how public issues can best be resolved without erecting barriers to competition. To this end, the RFA requires the FCC to analyze the economic impact of proposed regulations on different-sized entities, estimate each rule's effectiveness in addressing the agency's purpose for the rule, and consider alternatives that will achieve the rule's objectives while minimizing the burden on small entities.⁸

In this rulemaking, the Commission has made a substantial effort to comply with the RFA and SBREFA. Advocacy notes with pleasure the Commission's attention to the needs and concerns of small businesses. Furthermore, the Commission has made a bona fide attempt to

² Codified as amended at 15 U.S.C. §§ 634 a-g, 637.

³ 15 U.S.C. § 634c(1)-(4).

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.) ("RFA").

⁵ Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)) ("SBREFA").

⁶ 5 U.S.C. § 601(4)-(5).

⁷ See generally, Office of Advocacy, U.S. Small Business Administration, *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*, 1998 ("Advocacy 1998 RFA Implementation Guide").

⁸ 5 U.S.C. § 604.

balance its need for information on the status of local competition and broadband deployment with the burdens that the information collection will impose on small businesses. Advocacy offers these reply comments and proposes several alternatives to assist the FCC in achieving that balance.

1. The Commission Should Clearly State the Need for and Objections of the Information Collection

The Commission states that the information collection is necessary for the agency to fulfill its mandates under Sections 251, 271, and 706 of the Telecommunications Act of 1996.⁹ While Advocacy is inclined to agree, specific discussion in the Initial Regulatory Flexibility Analysis (“IRFA”) of what information is needed and why it is necessary would be appropriate due to the extensive reach of the information collection.

As the Personal Communications Industry Association (“PCIA”) stated in its comments, all reporting requirements should be clear, concise, and narrowly tailored.¹⁰ Advocacy fully supports this position and asks that the Commission provide a detailed description in the final regulatory flexibility analysis (“FRFA”) of which the Commission’s need for the specific information collected and how the Commission intends to use the information collection in later rulemakings. Needless to say, this will not include every possible way the Commission will use the information, but it should provide a foundation as to why particular information is being collected.

2. The Commission Should Raise the 1,000 Broadband Line Exception

Advocacy has consulted with the Office of Size Standards of the Small Business Administration regarding the alternative size standard proposed by the Commission, which

⁹ Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 251, 271, 706 (1996); NPRM paras. 7, 8, 19, Attachment C para 2.

would set the standard at a company with 50,000 or fewer access lines. The Office of Size Standards has informed Advocacy that it will discuss the matter with the Commission separately. The Office of Size Standards is responsible for reviewing the Commission's request and making a recommendation to the SBA Administrator, who has exclusive authority under Section 3(a)(2) of the Small Business Act to approve the Commission's contemplated alternative size standards.

However, Advocacy is concerned that the 1,000 broadband line threshold, which waives the exception for small businesses, is extremely low. Advocacy believes that setting the threshold at 1,000 broadband lines will cause many small businesses to be included in the information collection. While inclusion of small entities in the information collection may be necessary, the Commission should consider the size of the entities that will be responding to this request. Depending upon the situation, a company with less than 50 employees could have 1,000 broadband lines. The information collection would have a significant impact on these businesses, which would out-weigh the interest of the FCC to collect information.

Therefore, Advocacy recommends that the Commission either significantly reduce the burden on the small businesses that would be replying, by adopting one or more of the alternatives discussed later in these reply comments, or raise the 1,000 broadband line threshold. Advocacy notes that several other commenters raised these issues.¹¹ The Commission should consider these proposals in preparation of its final regulatory flexibility analysis. Advocacy

¹⁰ Comments of PCIA to the NPRM in CC Dkt. 99-301, at 6 (Dec. 3, 1999).

¹¹ Comments of the Association for Local Telecommunications Services ("ALTS") to the NPRM in CC Dkt. 99-301, at 5 (Dec. 3, 1999)(the FCC should consider 2,000 to 5,000 full broadband); Comments of PCIA to the NPRM in CC Dkt. 99-301, at 5 (Dec. 3, 1999)(the FCC should make exemption for those with 50,000 broadband lines); Comments of the Organization for the Promotion & Advancement of Small Telecommunications Companies ("OPASTCO") to the NPRM in CC Dkt. 99-301, at 3 (Dec. 3, 1999)(broadband exception should be removed, leaving 50,000 as exemption); Comments of American Cable Association ("ACA") to the NPRM in CC Dkt. 99-301, at 8 (Dec. 3, 1999)(recommended a 2,500 broadband customers standard).

believes that the threshold should be placed at least at 5,000 broadband lines. Any lower threshold would place an undue burden on small businesses.

3. The Commission Should Collect the Information on a Statewide Basis Annually

Advocacy agrees with those commenters that proposed that all information be collected on a statewide basis.¹² While more detailed reports would provide the Commission with more precise information, Advocacy does not believe that the limited value of the additional information out-weighs the increased burden that would be imposed on smaller carriers. Furthermore, a report that lists information on a statewide basis would also correspond with the many other statistical reports that divide the information the same way.

Advocacy recommends that the Commission collect the information on an annual basis. While a more frequent collection is potentially very valuable to the Commission, it must balance this with the burden that repeated information collections will have on small entities. The FCC states in its Initial Paperwork Reduction Analysis that it estimates the burden at a minimum of 30 hours, if the carrier only files in one state.¹³ If the Commission collects quarterly, this estimate will quadruple. Therefore, Advocacy agrees with those commenters that recommended the report be filed annually.¹⁴

4. The Commission Should Adopt Alternatives Proposed in the Comments

As stated above, Advocacy commends the Commission for considering the impact the information collection will have on smaller carriers. After reviewing the comments submitted to

¹² Comments of ALTS to the NPRM in CC Dkt. 99-301, at 6 (Dec. 3, 1999); Comments of United States Telecom Association (“USTA”) to the NPRM in CC Dkt. 99-301, at 2 (Dec. 3, 1999); Comments of PCIA to the NPRM in CC Dkt. 99-301, at 6 (Dec. 3, 1999).

¹³ NPRM para 85.

¹⁴ Comments of National Telephone Cooperative Association (“NTCA”) to the NPRM in CC Dkt. 99-301, at 4 (Dec. 3, 1999); Comments of ACA to the NPRM in CC Dkt. 99-301, at 11 (Dec. 3, 1999); Comments of ALTS to the NPRM in CC Dkt. 99-301, at 5 (Dec. 3, 1999).

the Commission, Advocacy believes that two alternatives proposed – voluntary reporting and short forms – are particularly compelling.

Advocacy recommends that the Commission allow small carriers to file their information as part of a voluntary reporting mechanism. Advocacy agrees with PCIA that a well-organized, well-advertised voluntary reporting system coupled with selective surveys would yield much the same information.¹⁵ Advocacy also believes that OPASTCO's recommendation that the trade associations conduct the surveys warrants exploration.¹⁶ While the Commission expressed concern that voluntary surveys are not fully satisfactory,¹⁷ Advocacy believes that a hybrid system, which utilizes trade associations along with proper notification and education of the reporting entities, would satisfy the Commission's data needs.

If the Commission decides that a voluntary survey is not sufficient, Advocacy recommends that the Commission should utilize a "short form" for smaller carriers. As discussed earlier, the short form is absolutely essential if the FCC keeps the 1,000 broadband line reporting threshold requirement and does not permit voluntary reporting. Advocacy agrees with those commenters that recommended the Commission adopt a short form of one to two pages in length.¹⁸ A short form that contains only the most crucial of questions would reduce the number of hours spent preparing the report and would significantly lessen the burden on small entities.

5. The Commission Should Aggregate Data Before Releasing to the Public

¹⁵ Comments of PCIA to the NPRM in CC Dkt. 99-301, at 2 (Dec. 3, 1999).

¹⁶ Comments of OPASTCO to the NPRM in CC Dkt. 99-301, at 5 (Dec. 3, 1999).

¹⁷ NPRM para. 18

¹⁸ Comments of NTCA to the NPRM in CC Dkt. 99-301, at 4 (Dec. 3, 1999)(recommended a "short form" that is 1 to 2 pages in length); Comments of OPASTCO to the NPRM in CC Dkt. 99-301, at 6 (Dec. 3, 1999)(limit form to pages 3 and 4 of proposed form); Comments of ALTS to the NPRM in CC Dkt. 99-301, at 8, 11 (Dec. 3, 1999)(form should be reformed and refined; Commission should seek limited information first, expand later if needed); Comments of PCIA to the NPRM in CC Dkt. 99-301, at 6 (Dec. 3, 1999); Comments of PCIA to the NPRM in CC Dkt. 99-301, at 4 (Dec. 3, 1999)(Commission should create a shortened form for small and rural carriers).

Advocacy supports the comments of OPASTCO and PCIA, which ask the Commission to aggregate data before releasing it to the public.¹⁹ Advocacy strongly feels that the data collected should be made public so that other agencies and small businesses can review the information. However, it is possible that a competitive advantage could be gained by reviewing the information. The Commission should be cautious of becoming the vehicle for exposing the business strategy of new entrants and competitive carriers to larger and more established carriers. By aggregating the information, this concern will be neutralized, while still allowing the fruits of the information collection to be made public.

Conclusion

Advocacy commends the Commission's efforts to balance its need for information on the status of local competition and broadband deployment with the burdens that the information collection will impose on small businesses. To ensure that the Commission receives the information it needs while imposing the least burden on small businesses, Advocacy recommends that the Commission allow the voluntary surveys or adopt a "short form" for small businesses.

Sincerely,

/s/ Eric E. Menge

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December 20, 1999

¹⁹ Comments of OPASTCO to the NPRM in CC Dkt. 99-301, at 8 (Dec. 3, 1999); Comments of PCIA to the NPRM in CC Dkt. 99-301, at 8 (Dec. 3, 1999).